

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

GRAYLIN GRAY,	)	4:13CV3026
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
NEBRASKA DEPARTMENT OF	)	
CORRECTIONAL SERVICES, et	)	
al.,	)	
	)	
Defendants.	)	

This matter is before the court on its own motion. On March 25, 2013, the court granted Plaintiff's Motion for Leave to Proceed In Forma Pauperis ("IFP"). (Filing No. [7](#).) However, upon further review, it appears that Plaintiff is not entitled to proceed IFP in this matter without first showing a danger of imminent harm. As set forth in the Prison Litigation Reform Act ("PLRA"), a prisoner cannot:

[B]ring a civil action . . . or proceeding [in forma pauperis] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action . . . in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. §1915(g).

The following three cases brought by Plaintiff were dismissed because they were frivolous:

- *Gray v. Grammar*, No. 4:95CV3446 (D. Neb.), dismissed as frivolous on April 18, 1996.

- *Gray v. Smith*, No. 4:95CV3405 (D. Neb.), dismissed as frivolous on March 15, 1996.
- *Gray v. Grammar*, No. 4:95CV3404 (D. Neb.), dismissed as frivolous on Feb. 14, 1996.

The Eighth Circuit has recognized that civil actions or appeals dismissed as frivolous, malicious, or for failure to state a claim before the effective date of the PLRA, are to be counted in determining whether a prisoner has three “strikes.” *See In re Tyler*, 110 F.3d 528, 529 (8th Cir. 1997) (recognizing without discussion the dismissal of Plaintiff’s pre-PLRA claims in determining his number of strikes). Accordingly, Plaintiff has until October 18, 2013, to show cause why he is entitled to proceed in forma pauperis pursuant to [28 U.S.C. §1915\(g\)](#). Alternatively, Plaintiff may pay the remainder of the court’s \$400.00 filing and administrative fees no later than October 18, 2013. In the absence of good cause shown or the payment of the court’s filing and administrative fees, Plaintiff’s Complaint and this matter will be dismissed without further notice.

IT IS THEREFORE ORDERED that:

1. The court’s previous Memorandum and Order granting Plaintiff’s Motion for Leave to Proceed in Forma Pauperis (Filing No. [7](#)) is stricken, and Plaintiff Motion for Leave to Proceed in Forma Pauperis (Filing No. [2](#)) remains pending.
2. Plaintiff has until October 18, 2013, to either show cause why he is entitled to proceed IFP pursuant to [28 U.S.C. §1915\(g\)](#) or pay the court’s \$400.00 filing and administrative fees. In the absence of either action by Plaintiff, this matter will be dismissed without further notice.

3. The Clerk of the court is directed to set a pro se case management deadline in this matter with the following text: October 18, 2013: Deadline for Plaintiff to show cause or pay full filing fee.

DATED this 18<sup>th</sup> day of September, 2013.

BY THE COURT:

*Richard G. Kopf*  
Senior United States District Judge

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